Holocaust Jurisprudence in Europe

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This article originally appeared as Appendix IV "Your Rights" in Kollerstrom's *Breaking the Spell*. —Ed

1948: Universal Declaration of Human Rights, Article 71:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1953: European Convention for the Protection of Human Rights, Article 10:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Restrictions on this apply "for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...

There is a content-based restriction to this protection of rights, and that deals with the "dissemination of ideas promoting racism and the Nazi ideology, and inciting to hatred and racial discrimination." This is said to reflect the "paradox of tolerance: an absolute tolerance may lead to the tolerance of the ideas promoting intolerance, and the latter could then destroy the tolerance."

Our concern here has been with what the Nazis did, historically: which does *not* constitute an endorsement of their actions. Indeed, research into what they did, which is the normal business of the historian, must surely help in enforcing a law prohibiting the "promoting" of "Nazi ideology," so that it can be applied more effectively.

1976: European Court of Human Rights

Ideas that offend, shock, or disturb the State or part of the population are deemed to have the full protection under freedom of speech. It considers that any limitation of this freedom must correspond to an "imperative social need," affirming this in the landmark case of *Handyside*:**[1]**

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to Paragraph 2 of Article 10... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society.'

This "Handyside paradigm" means that a democracy is required to protect the right to express minority opinions. But such a right to freedom of expression is not absolute, as indicated by Section 2 of Article 10 of the European Convention, above-cited.**[2]**

It should be the business of courts to sentence crime and promote justice, not attempt to throttle historical investigation by enforcing belief in US/UK atrocity propaganda left over from World War II, in which only a minority of the world still believes due to its vanishing credibility. The concept of crime involves in essence the inflicting of unacceptable harm on another, and should *not* cover a possible effect of fear induced in an ethnic or racial group, whether intentionally or not.

Revisionists are liable to find themselves accused of promoting anti-Semitism or hate-crime: it therefore becomes important to affirm that it is the currently accepted view which is promoting race-hatred – against Germans – whereas a revisionist view endeavors to describe European history without the hate and blame, but rather with mutual responsibility. It is the demonized-enemy images that create the hate.

2008: EU Legislation

In 2008 the European Union adopted a motion "Combating Racism and Xenophobia", which obliged all EU member states to criminalize certain forms of so-called "hate speech." "Hate speech" is a notoriously wooly concept, whose definition is always going to depend on who is in power. Its Article 1 defines criminal law applicable to member states:

Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

(a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin;

(b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;

(c) publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

Here, it is not the belief as such which can put anyone in jail, but beliefs which are liable to incite violence etc. The legal trigger is the act of incitement, not the "denial" as such. And nothing in this text alludes to World War II: the Rome Statute of the ICC here alluded to sets up quite general definitions, e.g., of genocide. The denying or trivializing of "crimes of genocide" is said to be punishable, *but* this law does not say what these crimes are; and moreover, it is only punishable *if* it is likely to cause something publicly visible, i.e. incites violence. The mere expressing of an opinion is *not* here defined as crime.

Anyone accused of inciting "hate speech" should insist that a qualified psychologist is present to testify that the emotion in question, namely hate, has been aroused, and say in whom, where and when it was aroused, as a consequence of the said speech: the court should not just accept the word of the prosecution concerning the alleged emotion.

A revisionist accused under this legislation may wish to bring a copy of Shlomo Sand's book *The Invention of the Jewish People* into the courtroom: that Jewish history professor shows in this book that European Jews are not an ethnic, national or racial group: Ashkenazi Jews may share some racial-genetic

characteristics, but these are not however shared by the Sephardic Jews; Jews are an international and cosmopolitan social elite, of whom a small proportion are religious. The categories of this Act are not applicable to them.

Article (c) is actually incoherent and does not make sense: for example, if a historian investigates the alleged genocide of Armenians by Turks in 1915-16 (the "denial" of which has been made a crime in France, as of 2012): that investigation cannot be "directed against" a group of persons of a race, colour, nation etc. – that does not make sense. A historian's conclusion may spark anger, but that is no reason to criminalize it.

2011: UN Human Rights Committee

Laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the Covenant imposes on States parties in relation to the respect for freedom of opinion and expression. The Covenant does not permit general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events. Restrictions on the right of freedom of opinion should never be imposed and, with regard to freedom of expression, they should not go beyond what is permitted in Paragraph 3 or required under Article 20.[3]

There is a helpful discussion of this important new edict by Fredrick Töben.[4] The first sentence of the above quote has a footnote alluding to the Faurisson case: "So called 'memory-laws,' see Communication No. 550/93, Faurisson v. France." Here, the UN Human Rights Committee is affirming that "laws that penalize the expression of opinions about historical facts," like France's Gayssot Act used to outlaw revisionism, are incompatible with the criteria for "freedom of opinion and expression."

Turning to the previous paragraph of the 2011 UN document, it places a limit upon the application of blasphemy laws – "Prohibitions of displays of lack of respect for a religion or other belief system." Over the decades of its sorry existence, European legislation against Holocaust revisionism has only ever protected the allegedly hurt feelings of one specific ethnic or religious group, viz. Jews. This paragraph makes clear that

It would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers.

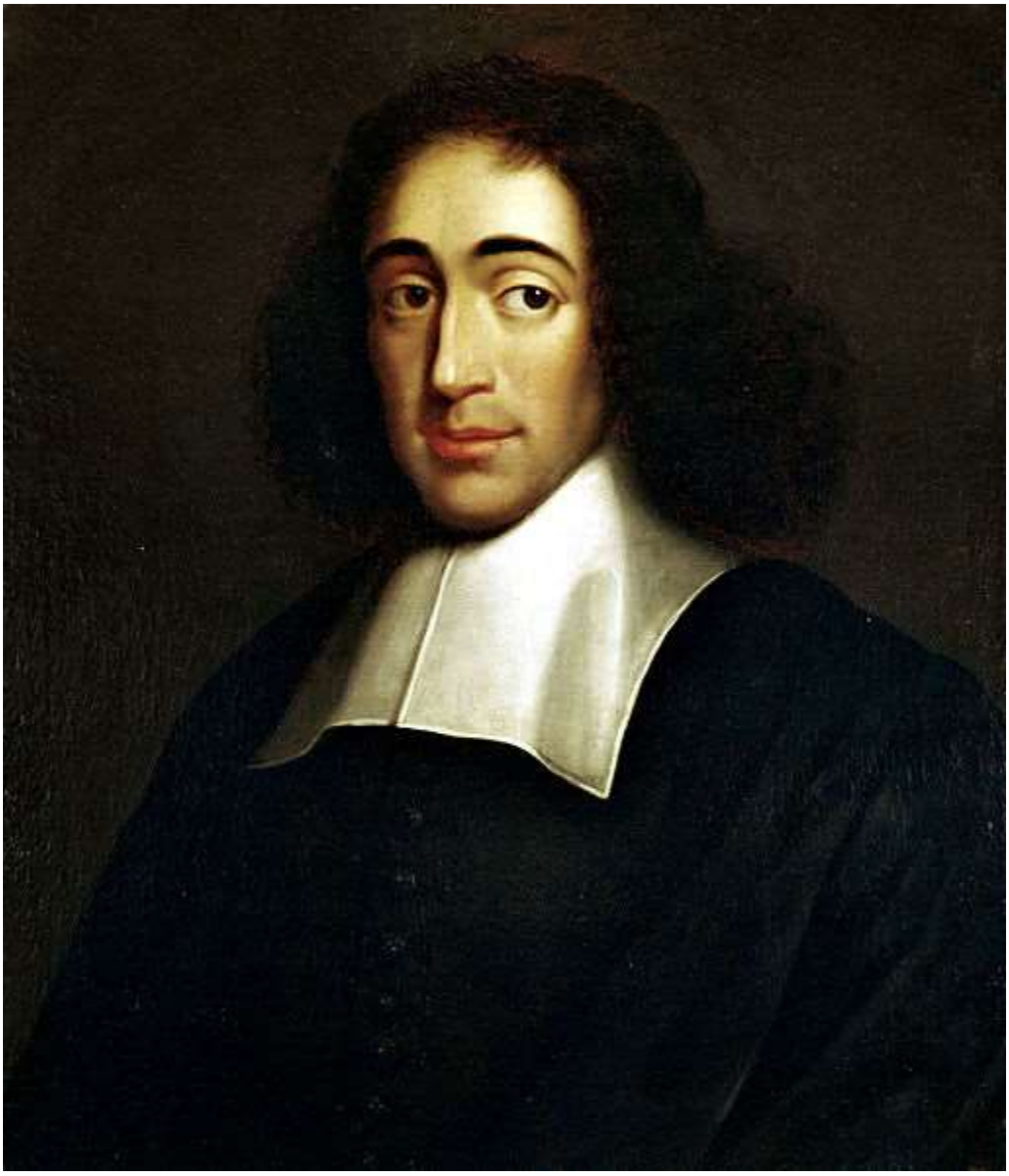
French lawyers need to discuss how this impacts upon enforcements of the Gayssot Act, which in practice has always protected only one specific belief system.

Just Law

Crime should be in essence a deed, not an intention or feeling. The policeman catches the villain who has committed a crime: the criminal has *done* something wrong. But, once the category of "Thoughtcrime" is introduced, then respect for the law will soon be replaced by fear of law enforcement. If Jews have collectively a self-perception of their ancestors being put into gas chambers, and if they "feel" that they do not like people pointing out that this perception is untrue, then that is regrettable – but, it has no business being a crime. Citizens need to demand that the laws of their nation are just and fair.

Explaining why the right of freedom of speech as expressed in the *International Covenant on Civil and Political Rights* (1966) was not applicable to Faurisson, after he appealed to them, the UN's Human

rights Committee alluded to a right of “the Jewish community to live free from fear.” Was any psychologist present to testify that Faurisson’s writings had induced fear in anyone? Faurisson was beaten up by a Jewish gang in 1989. Is anyone concerned that he has a right to live free from that fear? If the term “hate speech” is going to be used against revisionists in return for their work in ascertaining what happened in World War II, then a court needs to summon a psychologist to testify that such an emotion has in fact been generated. Citizens should campaign against bad law which convicts on the basis of an alleged emotion that might have been aroused.



Portrait of Dutch philosopher Baruch de Spinoza (1632-1677), ca. 1665
[Public domain], via Wikimedia Commons

The great Dutch philosopher Spinoza wrote books about just law. Holland is a nation that has traditionally cared passionately about individual liberties, has no Holocaust Denial ban in its law and has

only about half the fraction of its population in jail as compared to that in the UK. Let's have a quote from Spinoza that might be engraved on the walls of police stations:

Those laws which prohibit one from doing that which causes no harm to one's neighbor, are fit only for ridicule.

This is a secular humanist viewpoint, differing from that of earlier centuries, when voicing defiance or heresy upon sacred matters could land one in jail; an era which, unless we are careful, may now be coming back.

Dutch prosecutions do however take place on grounds of racial discrimination: it being there prohibited to "deliberately offend a group of people because of their race, their religion or beliefs." Accused in this manner, one should tell the Court that most people could be glad, not offended, at being told that their relatives had not died in gas chambers.

Bad Law

Of the new Oxford University Press textbook on the subject,[5] Michael Hoffman has rightly argued:

Genocide Denials and the Law is intended to serve as an inquisitor's manual, providing the definitive legal rationale for jailing modern-day heretics in the dungeons of Europe by first dehumanizing them as 'deniers.' […] a manual for inquisitors cloaked as an Oxford law study. It offers a rationale for punishing gas chamber heretics with long imprisonment, as a just and imperative penalty for daring to reject idolatry and collective false witness. This is a disgraceful work. ("On the Contrary" 20 June 2011) (http://revisionistreview.blogspot.com/2011/06/bow-to-their-holocaust-idol-or-go-to.html)

Its chapter titled "Defending Truth" is about how the people who are trying to find the truth need to be jailed. Its author Kenneth Lasson, Professor of Law at the University of Baltimore, a Jew, has basically written a chapter about how the goyim have to believe what they are told and how they need to be jailed if they don't.

The American authors of this text need to be asked why they have omitted to mention the fifty to a hundred million Native Americans whose lives were erased by the White Man, the greatest genocide in recorded human history. It's one that *did really happen,* so they would presumably argue that nobody is trying to "deny" it. Native Americans are America's real "Holocaust survivors."

Two people have been jailed in the UK for "denying the Holocaust," after distributing a comic book called *Tales of the Holohoax.* It seems to have been the pushy way they distributed this sensitive material rather than the content itself which landed them in jail. They posted it to the local synagogue in Leeds. This comic (with some rather fine text by Michael Hoffman) is in the great tradition of British satire, from William Hogarth to *Private Eye*.

They were jailed under the Public Order Act, with the Crown Prosecution Service saying they had gone too far, they had crossed the line, etc. Muslims might want to test the water by re-publishing this and selling it. After all, the Mohammed cartoons were allowed, and so was Salman Rushdie's *Satanic Verses*, which scoffed at Islam.

We now examine two national Holocaust-Denial laws, French and German.

1990: The French Gayssot Act

On the subject of the liberty of the press, France's Gayssot Act of 1990 made it an offense "to contest the category of crimes against humanity[6] as defined in the London Charter of 1945."It applied to the press, i.e. newspapers, specifying how they will be punished if they contest:

l'existence d'un ou plusieurs crimes contre l'humanité tels qu'ils sont définis par l'article 6 du statut du tribunal militaire international annexé à l'accord de Londres du 8 août 1945.

Can this be used to convict revisionists, accused of "denying the Holocaust"? Nothing in it alludes to ordinary citizens; it is simply an Act "sur la liberté de la presse." Yet twenty or so French revisionists have been prosecuted under it.

The London Charter of the International Military Tribunal here alluded to (of 8th August 1945) simply laid down the procedures by which the Nuremberg trials were to be conducted. (NB: This was in-between the bombings of Hiroshima and Nagasaki!) That Charter established three new categories of crime that were going to be applied retrospectively against the defeated Nazis: crimes against peace, war crimes, and crimes against humanity.[7] The judgement of Nuremberg was handed down in 1946, but this Gayssot Act relates *solely* to the category of crime to be used there – not to any later judgements, as is commonly supposed.

The Rome Statute of the International Criminal Court of 2002 re-stated these three new categories of crime as laid down in 1945. I suggest any French revisionist on trial should bring a copy of this into the Court and read out these categories, affirming that he/she is in no way disputing or contesting them. Article 6 of the Charter states, for instance:

For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group,

etc. One should welcome the category of Crimes against Humanity – and hope that Bush and Blair will in due time be prosecuted under them. Revisionists are in no way called upon to doubt or "contest" these categories, through whatever process of historical inquiry they are led.

France's Gayssot Act also prohibited "any discrimination founded on membership or non-membership of an ethnic group, a nation, a race or a religion." So France, wishing to promote uniformity and full racial-cultural assimilation, has in essence banned any clubs or meetings that are for a specific religion, race or nationality. Again I don't see why this should be a problem for revisionists.

Robert Faurisson was deprived of his professorship in symbolist poetry at the University of Lyon in 1991 under this law, and he appealed to the UN Human Rights Committee, on the basis of the International Covenant on Civil and Political Rights. His appeal (*Robert Faurisson* v. *France*, 1996) was denied – on the basis that Faurisson's statements were "of a nature as to raise or strengthen anti-Semitic feelings."

Prosecutions brought under that Gayssot Act in the two decades it has been working have all been against one specific ethnic/racial group, viz. Gentile French males, with charges brought by one ethnic/racial group, viz. Jews; which in itself sounds rather discriminatory under the terms of this act.

1985 The German "Public Incitement" Law (with Major Revisions in 1994 and 2005)

(1) Whoever, in a manner that is capable of disturbing the public peace:

a. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or

b. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population,

shall be punished […]

(3) Whoever publicly or in a meeting approves of, denies or belittles an act committed under the rule of National Socialism of the type indicated in Section 6 Subsection (1) of the Code of Crimes against International Law [=Acts of Genocide]*, in a manner capable of disturbing the public peace shall be punished* […]

(4) Whoever, publicly or in a meeting, approves of, glorifies or justifies the violent and arbitrary National Socialist rule, and by so doing disturbs the public peace in a manner that assaults the human dignity of the victims, shall be punished […]

Strangely, this law is primarily emotional, concerning various people's alleged feelings, rather than facts. There are several kinds of untruths which a prosecution under this Act imposes upon the accused, untruths concerning *motive* and *identity*. I therefore suggest the accused needs to feel their own innocence, feel whatever heart-purity they can summon, upon walking into the Court, and maybe say to themselves the words of Jimi Hendrix: "I am who I am, thank God." German courts have no jury and so the judge will be the final authority for whatever calumny the court casts upon the revisionist.

The worst course of action for the revisionist is to attempt to defend the truth of whatever they have said: propounding such historical-factual issues is likely to be viewed by the Court as compounding the offense – and providing grounds for further charges!

Against the accusation of "inciting hatred against sections of the population […] in a manner that is capable of disturbing the public peace," witnesses have been summoned to testify that the views expressed have not disturbed nor are they capable of disturbing the public peace, but in vain – these have not been allowed, or have been disregarded. It should however be no business of the accused to summon such witnesses because citizens should be presumed innocent until proved guilty, not the other way round – the onus should lie upon the prosecution to demonstrate the impossibly vague notion of "capable of disturbing the public peace." Every one of us knows what disturbs the "public peace" – guns, loud noises, unruly crowds, people with megaphones etc. Nobody can disturb the public peace by writing a book. In vain an author may dream or hope of disturbing the public peace by writing a book, but it's not going to happen!

The mere testimony of the prosecution cannot here suffice as regards what might possibly disturb the public peace.

Whoever "assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population" is here liable to imprisonment. It is the normal business of comedians to do this; indeed it could be hard to ply that trade, if this crime-category is insisted upon. A crime should involve *unacceptable* harm or loss and not just a *feeling* that someone has been insulted.

The third section ("Whoever publicly or in a meeting approves of, denies or belittles an act committed under the rule of National Socialism…") is hardly relevant, because revisionists are not known for proclaiming their views at public meetings. Publishing a book is a public act and so could here be alluded to. The last book to appear "in a manner capable of disturbing the public peace" was arguably Karl Marx's *Communist Manifesto* of 1848.

The accused may tell the Court that persons disturbing the public peace generally do not read books, that pamphlets and flyers rather than books have disturbed the public peace, and that, if they wish to prosecute on such grounds, the onus lies on them to explain why the millions of books published since Marx's *Communist Manifesto* have failed to cause any such disturbance. The whole idea of this clause is inherently absurd as applied to revisionists. The accused should tell the Court that this clause might have been relevant to a previous generation who grew up in the aftermath of the War, but applied to modern truth-seeker historians is simply absurd.

The slur or untruth is here cast against the revisionist, that their motive in ascertaining historical truth is political, namely that they are covert neo-Nazis. The Court is here lying through its teeth and knows it. The accused should use polite and respectful language, e.g. state that, in the past, German courts have deceitfully sought to ban inquiry into World War II historical truth by pretending that it was motivated by pro-Hitler loyalty or anti-Jewish feeling, and he trusts that the present court will not likewise err. If the aim is to criminalize anyone who "approves of, denies or belittles an act committed under the rule of National Socialism," then clearly historical investigation must be permitted into what those acts were. Otherwise, how can the Court know whom to punish? Judges are not trained to be historians, as historians are not trained as judges.

Implicit in this encounter is the judge's presumption that his career depends upon his accepting the good-versus-evil victor's narrative laid down at Nuremberg, so that anyone who tries to re-tell the German history must therefore be a wicked Nazi. The revisionist in the dock has to affirm that he or she is the historian, is the only historian present in the Court, and is therefore competent to advise the Court about "an act committed under the rule of National Socialism" in relation to genocide, as this *Volksverhetzung* law specifies.[8] An act not subsumed under said rule cannot be of relevance to the Court, can it?

The fourth section is more of the same: "whoever, publicly or in a meeting, approves of, glorifies or justifies the violent and arbitrary National Socialist rule, and by so doing disturbs the public peace in a manner that assaults the human dignity of the victims" – again this cannot logically be applicable, because, as we have seen, a book published can hardly disturb the peace, and other private statements by revisionists likewise will not do so. Witnesses need to be called by the prosecution to demonstrate that any such approval or "glorification" has publicly taken place.

The definition of revisionism by Faurisson should be given to the Court, whereby it is *not* a political program but "a quest for historical exactitude." The accused needs to believe he or she is *harmless.* Only that can negate the various afactual categories tied up in this nefarious law. The Court should be told how only a quest for historical truth in World War II can properly share out blame and responsibility and thereby *dissolve* the hate images. It is not or should not be the business of the historian to endorse a Manichaean dualism, a cosmic good-versus-evil struggle, found within the historical process – as is implied by this Act.

The first section of this Act will work better under a mirror-reversal, whereby it is promoters of the Holocaust mythology who are continually inciting "hatred against segments of the population" and who are assaulting "the human dignity of others," in a manner prohibited under this Act, whereby a "segment of the population" is made to suffer continually for something that should be relegated to the past. (The "segment" here comprises the remaining but diminishing older generation who fought in the War.) The public peace is very much disturbed by the inquisitors who check through personal libraries for books to be banned and burnt, and who monitor e-mails.

It is probably best to avoid using the J-word, but if it is insisted upon, one could point out that there were various social groups in the German labor-camps: gypsies, Poles and Russians as well as Jews, and that the story of what happened does not belong exclusively to any one of them.

In summary I suggest it is not this law as such which puts the revisionist behind bars, but rather its misuse through unfair and untrue indictments and judgments.

Notes:

[1] *Handyside v. UK*, 1976.

[2] *Genocide Denials and the Law,* L. Hennebel & T. Hochman, Oxford University Press 2011.

[3] UN *Report of the Human Rights Committee CCPR Centre 2011*: para 49 of a section "International Covenant on Civil and Political Rights," p. 257.

[4] Dr. Fredrick Töben, "Human Rights, the Holocaust-Shoah and Historical Truth," *The Barnes Review* Blog, 15 April 2012, here starting at Section "9. Human Rights, the United Nations, and Free Expression" (online).

[5] *Genocide Denials and the Law*, Ed. L. Hennebel and T Hochmann, 2011.

[6] Online: **http://en.wikipedia.org/wiki/Crimes_against_humanity**

[7] These three categories have been more recently re-stated in the *Rome Statute of the International Criminal Court* of 2002.

[8] Online: **http://en.wikipedia.org/wiki/Volksverhetzung**

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Title:	Holocaust Jurisprudence in Europe

Sources:	Chapter "Your Rights" of Nicholas Kollerstrom, *Breaking the Spell*, 2nd ed., Castle Hill Publishers, Uckfield 2015, pp. 235-244; reprinted in *Inconvenient History*, vol. 7, no. 4, Winter 2015/16
Dates:	published: 2015-11-25, first posted: 2015-11-27 15:37:36

http://inconvenienthistory.com/7/4/3852